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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/575,297 | 04/11/2006 | Bernd Schessl | 2003P01288WOUS | 3142 |
| 46726 7590 01/06/2010 BSH HOME APPLIANCES CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 100 BOSCH BOULEVARD NEW BERN, NC 28562 | | | | |
| EXAMINER CASTELLANO, STEPHEN J | | | | |
| ART UNIT 3781 | | PAPER NUMBER | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

Office Action Summary

Application No.

10/575,297

Applicant(s)

SCHESSL ET AL.

Examiner

/Stephen J. Castellano/

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 and 26 is/are allowed.
- 6) ☒ Claim(s) 13-24, 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claims 1-12 have been canceled. Claims 13-30 are pending.

The drawings are objected to because Fig. 2 a section view of a detail of the first embodiment crockery basket of Fig. 1 is very different from Fig. 1. The rack 3 is of a different configuration; (1) supporting clips 6 are not shown, (2) the wire profile of constant thickness is not shown, rather the profile of the rack is tapered from a wide thickness at the end proximal to the pivot pin 9 to a narrow thickness at the end distal to the pivot pin, (3) the pivot pin (9) is shown aligned with the top surface but not the bottom surface, and (4) there is a downwardly extending flange at the distal end of the rack. The framework is of a different configuration in Fig. 2 as the wires 7 (vertical wires at the right side) are perfectly vertical wherein in Fig. 1 the top portion of wires 7 are bent outwardly then bent vertically before their upper end. The position of the ladder 4 has been changed in Fig. 2 such that top horizontal wire 2 is engaged by clip 8 rather than a horizontal wire 2 spaced below the top horizontal wire 2 as shown in Fig. 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13-24 and 27-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 13 states that the “holding elements being secured on the common edge along only one side of the framework.” However, when reading the text of the original disclosure, claims abstract and written specification, this limitation is not supported. There is no support for the term “common edge.” There is no support for excluding the holding elements to only one side of the framework. When viewing with the drawing figures, there is no support found for the “only one side of the framework” limitation. Fig. 1 is the most comprehensive view and shows the right side and parts of the front and rear sides and the bottom but nothing from the left side. For these reasons, claims 13-24 are deemed to contain new matter.

Claim 27 states that the mechanical stop (formed by supporting clip 6, see Fig. 1) is engageable with the framework when the rack is in the generally horizontal position. However, the mechanical stop is merely abutable rather than engageable as wire to wire contact makes an

abutment rather than an engagement. There is no support for the mechanical stop formed by clip 6 being engageable with the framework. For this reason, claims 27-30 are deemed to contain new matter.

This is a new matter rejection.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-15, 17 and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Pendergrast, Jr. (3137251) (Pendergrast).

Pendergrast discloses a merchandise rack capable of holding crockery, the rack has a framework comprising short front wall, a taller rear wall and two sides defined by an inclined bar on each side, the framework can retain items to be washed and is capable of performing as a crockery basket. Insofar as claimed, the framework has a common edge, the right or left side edge of the rear wall. Four racks (shelves 28) are shown to be supported on the rear wall in cantilever manner with each supported by a holding element. The holding elements (including at least bars 34 and 40) are detachably engage to the rear wall and can be moved to many various positions along the height of the rear wall. The holding elements are secured on the common edge along only one side of the framework (the rear side).

Claims 13-20, 22-24, 27 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (5480035).

Re claims 13 and 25, Smith discloses a crockery basket comprising a framework (dishwasher rack), the framework including a common edge (the edge provided by the middle additional wire 15), at least one rack (shelf 20) and a plurality of holding elements (plates 22) hold the rack at different height positions on the basket, the holding elements are secured on the common edge.

Re claims 13-17 and 22-23, a group of holding elements is defined by (hubs 50, 51 on the plates or end caps 22). The holding elements are indirectly secured on the common edge as the holding elements are attached to plate 22 much like the holding elements 5 are indirectly secured on the common edge because they are secured to ladder 4. A first group of holding elements (first device) is provided on a first end cap 22 and a second group of holding elements (second device) is provided on a second end cap 22. The groups of holding elements on an end cap 22 are configured as a fixing ladder with one holding element located above another to make the height of the shelf adjustable.

Re claim 18-20 and 24, insofar as disclosed by applicant the horizontal meshes merely need to be horizontal members. Smith discloses horizontal meshes 15 arranges one above the other, the rack has fixing structure as the bars or wires of the rack are fixed to the holding elements which engage the horizontal meshes

Re claim 24, the rack has a mechanical stop that engages a stop (ribs 56, 57) of the end cap 22 (see col. 4, lines 3-7 and Fig. 2-3 and 5-7).

Re claim 27, the rack includes a pivot pin rod 24 with projecting ends 32 which fit within hubs 50, 51, the rack pivots between generally horizontal and vertical positions as Fig. 6 and 7 show the range of movement of the racks, the horizontal positions are the positions where the

racks are pivoted downwardly to abut elements 56 and 57, rod 26 forms a supporting clip to form a mechanical stop as is abuts the elements 56 and 57 to stop the rotation of the rack when the rack reaches the generally horizontal position.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith.

Smith discloses the fixing structure of the rack and the first device made of plastic as col. 3, lines 12-16 discuss the polypropylene material of the first device. Smith discloses the invention except for the plastic material of the fixing structure of the rack. Official notice is taken that racks of plastic are well known. It would have been obvious to modify the material of the rack to be plastic to allow easier manufacturing by molding, durability, and a readily available material.

Claims 25 and 26 are allowed.

Claims 28 and 29 are not allowed or rejected by an art rejection. It is believed that applicant may be able to overcome the new matter rejection and put these claims into independent form to put these claims into allowable condition.

Applicant's arguments with respect to claims 13-24 and 27-30 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Stephen J. Castellano/ whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen J. Castellano/
Primary Examiner
Art Unit 3781

sjc